

Minutes

Joint Legislative Oversight Committee on Justice and Public Safety

January 12, 2012

2:00 p.m. Room 544 LOB

The Joint Legislative Oversight Committee on Justice and Public Safety was called to order by Representative Shirley Randleman at 2:10 p.m. Members present at the meeting were Representative James Boles, Representative Justin Burr, Representative James Crawford, Representative Jon Faircloth, Representative Dan Ingle, Representative Mark Hilton, Representative Annie Mobley, Representative Tim Spear, Representative Sarah Stevens, Senator Thom Goolsby, Senator Austin Allran, Senator Harry Brown, Senator Peter Brunstetter, Senator Don East, Senator Edward Jones, Senator Ellie Kinnaird, Senator Buck Newton, and Senator Warren Daniel. Also present were staff members Brenda Carter, Susan Sitze, Doug Holbrook, Kristine Leggett, John Poteat; Committee Clerks Kerry Guice, Joseph Kyzer, James White; Sergeant-at-Arms John Brandon, Larry Elliot, Buck Adams, Jim Blackburn, Billy Fritscher, Ernie Sherrell, and Carlton Adams.

Representative Randleman, presiding Chair of the meeting, welcomed everyone present. She asked if there were any remarks from the Co-Chairman Senator Thom Goolsby – he had no comments to make at that time. A quorum of the Committee present, Chairman Randleman proceeded to seek adoption of the minutes by asking if the Members had any corrections, additions or deletions. Seeing none, the Chair entertained a motion to adopt the minutes as drafted. Representative Tim Spear motioned, seconded by Senator Edward Jones, and the Chair asked all Members wishing to vote in favor of the adopting the minutes to raise their hands. With all members in agreement and none disagreeing, the minutes were adopted as drafted.

Follow-Up Items

Chair Randleman recognized John Poteat, NCGA Fiscal Analyst. Mr. Poteat reminded the Members that at the last meeting a significant portion of time was spent on the topic of Prison Chaplains. He noted that they were provided a memo to explaining community supported Chaplains and volunteers in prisons (see attachment #1). Furthermore, the Members were provided a memo from Hall Pell, Committee Counsel, that details prisoner's rights related to religion (see attachment #2). Chair Randleman thanked Mr. Poteat and encouraged Members to review those items.

At that point, the Chair acknowledged that the committee had recently lost a House Co-Chairman, Representative David Guice. Mr. Guice accepted a position within the Department of Public Safety as the Director of Community Corrections. Chair Randleman noted that Mr. Guice had been very helpful and contributed abundantly to the Committee and the General Assembly; for his service, the Chair was very thankful. The Chair also noted that Fiscal Analyst Doug Holbrook had also recently accepted a position within the Department of Public Safety, noting that the committee extends full appreciation for his service.

Presentations

The Chair introduced and recognized Greg Stahl of the Administrative Office of the Courts (AOC) to present on Judicial Department Workload Formulas (see attachment #3).

After the presentation, Chair Randleman opened the floor for questions and comments. Senate Co-Chair Goolsby asked Mr. Stahl if the numbers that were used to depict the amount of time spent by judges on cases were generated via the clerk's offices. Mr. Stahl stated that the clerks were directed to keep the minutes and that the AOC was directed to evaluate the Superior Court Judges simultaneously. He also stated that the data was not available to the AOC in a meaningful fashion to check against what the judge's reported as time spent on various cases. Senator Goolsby followed up by asking if the methodology for the minutes was generated by the National Center for State Courts. Mr. Stahl responded by stating that when judges agreed that these were their case types, those numbers were generated by the judges filling out time sheets each day – the sheets detailing how many minutes they spent on each case type. Mr. Stahl went on the note that there was 95% participation from the Superior Court Judges in regard to filling out their time sheets for a month. Senator Goolsby inquired on when the clerk's numbers would be available. Mr. Stahl stated that all the numbers are being regenerated for the next fiscal year, but all numbers available – noting that the clerk's numbers had been around for some time now. Mr. Stahl continued his answer by informing Senator Goolsby that there would be slight change in the figures from the need of 354, but that figure was very close. Senator Goolsby asked if Mr. Stahl would be able to present the minutes by the clerks and provide them to the committee. Mr. Stahl agreed. Mr. Brad Fowler, AOC Staff, was recognized and stated that those figures are available and had been submitted for the first quarter. He also mentioned that the clerk's minutes were only on bench time only. The judges recorded all the time spent on case type, some of that on bench time. Mr. Fowler went on to state that the National Center looked at the clerk data as one subset, but the definitive numbers used were the time the judges reported. Senator Goolsby reiterated to the AOC that he would like to see the clerk's numbers. Chair Randleman recognized Senator Don East who made a request to compile information on the monetary impact of prosecuting a case. The Senator asked, given all the figures on the minutes and each player involved, how much does it cost for each case type. Mr. Stahl responded to the request by stating

that the AOC used to calculate based on the cost of a typical day in court, but they have backed off that practice because everyone involved in the prosecuting process is salaried and that may not be an accurate projection due to the work those individual may be performing on other cases. The Chair recognized Representative Ingle who asked if figures existed that reflect the travel costs of Superior Court Judges. Mr. Stahl responded by stating that travel and mileage figures were documented. The current laws call for judges to complete reimbursement forms. Chair Randleman recognized Senator Kinnaird who asked if a dispute on the method used for formulas for Distract Attorneys had been resolved. Mr. Stahl stated that it had been resolved on most aspects. Chair Randleman recognized Representative Tim Spear who asked if the formulas show circumstances of overstaffing and are those details reported to the General Assembly. Mr. Stahl responded by recounting that during the last Legislative Session the General Assembly observed that there was an overage in Magistrates in certain counties. He went on to state that the Assembly took vacancies in counties that had staffing that exceeded the formula suggestions, and outlined 42 more cuts effective January 1, 2013. Mr. Stahl mentioned that the AOC generally focuses the attention of the General Assembly to the counties that may need more staff. Mr. Spear followed-up by asking how the AOC addresses when the formula indicates a staffing need that is below how many position actually exist; does the AOC have authority to reorganize staff to counties with staff deficiencies. Mr. Stahl answered by stating that the AOC Director has the authority to reorganize within the clerk's offices as well as with the Magistrates, as long as the minimum requirements are met. Mr. Stahl continued by elaborating on the fact the General Statutes do not clearly set out the number the Assistant District Attorneys, Judges, and Superior Court Judges. He also stated that it is a difficult situation for the Director of the AOC to notify a county that a vacancy is being given to another county, but he noted that the current Director has done a good job of asking clerks if they will volunteer or if they can solve staffing problems amongst themselves. The Chair recognized Senator Jones who asked if Magistrates were assigned to counties or Judicial Districts. Mr. Stahl responded that a judge has the ability to move a Magistrate on a temporary basis if it is multi-county district; however, the AOC does not have authority to establish emergency Magistrates – unlike Emergency Judges. Mr. Stahl also stated that a Deputy Clerk can perform the same tasks that a Magistrate can do and that resource can be used. Senator Jones followed-up by asking if workloads increase on magistrates because of not having enough staff to compensate for vacation time, accidents, and other circumstances that may limit staff numbers. Mr. Stahl agreed, but also emphasized that the workload formulas take into account all personnel outages. Senator Jones followed-up by asking if Magistrates are working more than 40 hours per week. Mr. Stahl answered by stating that the AOC does not keep a time sheet on anybody. In small counties, those persons may be on call. Chair Randleman asked if it was up the Chief District Court Judge to set the schedule. Mr. Stahl agreed, and added that there is a minimum requirement of three Magistrates per county; a minimum staffing requirement of six staff plus the Clerk within the Clerk's Office. The Chair recognized Representative Justin Burr who asked if Magistrates were allotted sick days. Mr. Stahl answered that neither Magistrates nor Assistant District Attorney because they are appointed.

Representative Burr followed-up by asking how the AOC takes that into account with regards to a work formula and staff needs. Mr. Stahl responded that the Chief District Court Judge sets the schedule and the agreed on time off as part of that agreed upon schedule. Representative Burr commented on situations where he has heard of staff needing extend sick leave. He asked if the AOC could provide a spreadsheet detailing the staffing changes of the Magistrates, Assistant District Attorneys, Assistant Clerks to see where the growth patterns. Mr. Burr noted that his concern is limiting the number of Magistrates and the burden that may create on the system, agreeing that taking the number down to 3 may work in some circumstances; however, this may not be a good situation in other counties. Mr. Stahl said they would gather that information. He added that the Magistrates recommended the number 3, Mr. Stahl and the AOC recommended 5. Furthermore, the formula can help in detailing counties that are similar and why some are more effective and others are less effective – this may be in part to remote sites for Magistrates. Mr. Stahl then stated that AOC is going to start offering video conferencing in the smaller counties, using technology to fill the deficiencies. Mr. Stahl then reiterated that the cut of 42 Magistrate position was not his idea. The Chair recognized Senator Jones who asked who advocates for the Magistrates. Mr. Stahl informed Senator Jones that they have an association with a president who does some legislative work; however, the AOC performs advocating on the Magistrates behalf. Chair Randleman recognized Representative Burr who asked if Mr. Stahl had details on numbers within the association. Mr. Stahl noted that it is not a formal dues paying association but more of a professional association; he also gave a figure of a total of 750 Magistrates in North Carolina. Representative Burr followed-up by asking Mr. Stahl to clarify that the Magistrates Association advocated for fewer magistrates in each county. Mr. Stahl clarified by stating that their association advocated for 3 Magistrates as a minimum when they were working on the workload formulas. Representative Burr commented that he found it hard to comprehend that the Director of the AOC was advocating for a larger number and a professional association advocating for fewer. Chair Randleman noted that she had some experience with the magistrates association and that the organization is alive and well, noting that they are very active. The Chair recognized Representative Mobley who commented that she could not comprehend how efficiency would be maintained when decreasing the Magistrates from 6 to 3. Chair Randleman then asked on the reduction of Magistrates is based on workload and how the AOC is addressing that process. Mr. Stahl noted the AOC has been speaking with the counties and facilitating the sharing of best practices from a county who has operated with 3 to a county that is reducing. He went on note that AOC was working to soften the impact by seeking out voluntary reduction in force and attrition. The Chair thanked Mr. Stahl for speaking before the committee.

The Chair introduced and recognized Thomas Maher, Director of the Office of Indigent Defense Services (OIDS), to present on overview on OIDS and the topic of requiring requests for proposals and contracts (see attachment #4).

After the presentation, Chair Randleman opened the floor for questions and comments. The Chair recognized Senator Newton who asked what states were looked at in regards to the unit model. Mr. Maher responded by stating that Oregon, New Mexico, New York, and Wisconsin were looked at. He added, a number of places were looked at that did not have a state system, for example Indiana that had county systems. In North Carolina, OIDS took the existing system of dividing cases in a jurisdiction among lawyers and applied that to unified statewide system. Mr. Maher stated that he doesn't know if there is a specific state that has created an indigent defense system precisely like NC, but took the strong points from many models. Senator Newtown followed-up by asking what feedback he had received from lawyers. Mr. Maher stated that the feedback had largely been negative and lawyers were angry because they do not like the system. Senator Newton stated that, as an attorney, he is not on the roster, and he does not understand the system and if his practice will be fairly compensated for the work they perform. The Senator went on to state that, as a potential bidder, the attorneys need to understand the consequences of making that business decision. Mr. Maher responded by stating that the system will be easier to evaluate once the numbers have been plugged in, estimating caseloads may not always reflect the future. Senator Newton expressed his concerns over preferential treatment. Mr. Maher stated that he could not promise that some would get great deals with the system and others would get less than desirable deals – on average, it should be a fair deal. He elaborated by explaining that some jurisdictions pay flat fees per case, but, instead, OIDS will bundle cases so that the likelihood is that each lawyer is closer to the average. A contract system cannot work on an hourly basis (the roster system), because OIDS cannot process and judge hours for 200,000 cases. The Chair recognized Senator Daniel who asked if there were any states that have a split flat fee process, a flat fee for a plea versus a flat fee case that has gone to trial. Mr. Maher stated that they had looked at some, but OIDS has reserved funds to make payments for extraordinary cases that take up a large amount of time – OIDS can either reduce the future caseloads for that attorney or make an exceptional payment. Mr. Maher also noted that OIDS will be tracking the nature of the cases as attorneys are assigned to them and will address instances that may raise red flags. Senator Daniel asked if OIDS will publish any guidelines as to what an excessive time case. Mr. Maher responded by stating that extraordinary circumstances will be just those and not necessitates guidelines and, due to the new nature of the system, guidelines may need to be developed later in time. Chair Randleman recognized Representative Spear who asked how OIDS counts cases in the unit system when multiple charges are involved. Mr. Maher stated that OIDS had been counting dispositions because attorneys will dispose of a numbers of charges at one time. OIDS will largely follow the District Attorneys Workload Formula, which relates charges to a defendant upfront – totally unrelated charges are a separate case. Chairwomen Randleman recognized Senator Jones who asked how much was the collection rate of attorney's fees on lost cases. Mr. Maher stated that OIDS recouped \$12 million dollars in the last fiscal year. OIDS has lowered the rate they are paying attorneys and are starting to see a reduction. Mr. Maher went on to state that the percentage was something OIDS could only estimate because they do not track by case and is recouped only if a defendant is found guilty. Senator Jones

followed-up by asking what percentage of the budget is the \$12 million and if the system is prosecuting those who do not pay the attorney's fees. Mr. Maher stated that it is slightly less than 10% of the OIDS budget, and civil judgment can be entered against a person who does not pay. Mr. Maher also noted that OIDS has a practice of intercepting State Tax Refunds and State Lottery Winnings in order to obtain fees. The Chair recognized Co-Chair Senator Goolsby who informed Senator Jones that persons in that situation usually pay those fees back during terms of probation – meaning, a probation violation if they do not pay. Senator Goolsby also noted that a major aspect in the appropriations process was to save the state money and instill competition between public defenders and steer clear of abuses on the appointed lists – a more rational, capitalist based system. He asked Mr. Maher if OIDS is looking at any model where attorneys could step into the breach and contract to handle a certain number of DWI cases each month for an agreed upon amount per month – allowing for the dismissal of public defenders, saving the state money, and truly looking at a competitive scenario. The Senator also asked if young lawyers are getting proper training. Mr. Maher answered by stating that there are many circumstances where OIDS has identified that there is not a large enough range of hours that it takes to handle particular cases. He noted that there was a concern with unsustainable contracts, lawyers bidding for amount that OIDS would need to turn down because they were not providing the resources to do that. Senator Goolsby noted that he often contracts within his practice and he noted that he may choose to contract on a case that actually causes a loss in profit for his practice, but that is part of the system. The Senator also mentioned the professional responsibility standards and he is not concerned with the lawyers not meeting those standards due to the ramifications that they may incur. The Senator added that he wants to work to ensure that this system does not go to all Public Defenders and no private attorneys – the quality of the legal practice will diminish and the costs will go through the roof when everyone is turned into a state employee. The Chair thanked Mr. Maher for speaking before the committee.

Chair Randleman recognized former State Senator Tony Rand, Chair of the North Carolina Post-Release and Parole Commission, to present on the impact of the Justice Reinvestment Act (JRA) on the Parole Commission (see attachment #5).

After the presentation, Chair Randleman opened the floor for questions and comments. The Chair recognized Senator Kinnaird who asked if the JRA would cut down on violations and if the projections of the Parole Commission are based on the older policies of supervision. Mr. Rand responded that the Commission is dealing with people who come directly from prison, and they set the conditions for their release. Mr. Rand also stated that they did not ask for any of the Justice Reinvestment Act, and they were not consulted, but this is the obligation now. He then went on to detail the process – release papers are sent to the prison unit, the parole officer has the responsibility to work with that individual, but the Commission does not set the levels of supervision for those being released. Mr. Rand stated that the new criminals that they had to supervise, felonies F through I, violate again at a higher rate than the more serious felons – 65%,

1,830 individual of the total 2,933 cases, violated the terms of parole. This meaning, if the Parole has to deal with a larger caseload now, there will likely be a larger number of violation offenses. Senator Kinnaird followed-up by commenting on the fact that she understood the goal of JRA to supervise the parolees closely and hopefully keep them away for violations. Mr. Rand stated that was the expectation. Chair Randleman recognized Doug Holbrook, NCGA Fiscal Analyst, who emphasized the point of Mr. Rand – everyone who the Parole Commission is dealing with will have already been to prison and that makes them a higher risk offender then the initial probation population that JRA is focused on. In many cases, the G, H, and I felons went to prison because they did fail originally on probation in the community. He went on to state that these are a subset within the group that are much more likely to be committing violations, and those violations may be technical in nature. The Chair thanked Senator Rand for speaking before the committee.

The Chair recognized Senator Allran who asked a question in regard to emails he was receiving on drafting a model bill for correctional health care. He asked what options were available for a study on the matter. The Chair recognized Mr. John Poteat. Mr. Poteat noted that many people were receiving the email. He went on to state that many of the suggestions in the mass email have already been implemented in North Carolina. Senator Allran commented on the fact that he does not know if the email should be taken seriously. Chair Randleman recognized Susan Sitze, Committee Counsel, who stated that Hal Pell, Committee Counsel, has already drafted a response and that correspondence may specify how NC has already implemented some of the concerns. Mr. Poteat added that this situation was related to Inmate Medical and the model legislation outlines a proposal wherein Medicaid will pay for inmates health care costs. Mr. Poteat informed the committee that he would work a response and present it to the committee in the future meeting.

The Chair noted the next meeting time to be February 9, 2:00 pm, room 544. The agenda may include a report on the new Department of Public Safety.

There being no further business, Chairwomen Randleman adjourned the meeting at 4:02 pm.

Respectfully submitted this 9th day of February, 2012

Representative Shirley Randleman, Chair

James White, Committee Clerk